

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Petition For Declaratory Ruling Asking)	PS Docket No. 06-229
To Clarify The Scope Of Section 337)	
Regarding Use By State And Local)	
Government Entities Of The 700 MHz)	
Public Safety Broadband Spectrum)	

COMMENTS OF THE STATE OF NEW MEXICO

The State of New Mexico ("SONM" or "New Mexico") hereby submits the following in response to the Commission's March 22, 2011 Public Notice in which the Public Safety and Homeland Security Bureau (Bureau) requests comments on a Petition for Declaratory Ruling filed by the City of Charlotte, North Carolina ("Charlotte Petition") in the above-captioned proceeding¹. As an approved early builder and federal grant recipient, SONM is authorized for early deployment of the New Mexico portion of the nationwide 700 MHz public safety broadband network. SONM intends to include a wide range of state and local governmental entities on the statewide system. As such, it is essential to New Mexico's 700 MHz plans that the Commission issue a declaratory ruling as requested by the Charlotte Petition confirming that under existing law all local and state governmental entities are eligible users on the 700 MHz public safety broadband

¹ Public Safety And Homeland Security Bureau Seeks Comment On Petition For Declaratory Ruling Asking To Clarify The Scope Of Section 337 Regarding Use By State Or Local Government Entities Of The 700 MHz Public Safety Broadband Spectrum. DA 11-537, released March 22, 2011.

spectrum authorized to transmit communications essential to official activities of the governmental entity.

**I. As An Authorized Early Builder And BTOP Grant Recipient
It Is Important to New Mexico That A Wide Range Of State
And Local Governmental Entities Operate On
The 700 MHz Public Safety Broadband Spectrum.**

SONM is committing significant resources towards deploying a statewide 700 MHz LTE public safety broadband network and has a critical interest in the outcome of this ruling. New Mexico was granted a waiver by the Commission in May 2010 to commence early deployment of its system and subsequently entered into a lease agreement with the Public Safety Spectrum Trust ("PSST") for statewide use of the spectrum.² Funding for the initial phase of the New Mexico statewide system is being provided by a grant under the Broadband Technologies Opportunities Program ("BTOP") administered by the National Telecommunications & Information Administration ("NTIA"). Under the grant, SONM is making critical cash and in-kind contributions to facilitate the initial buildout.³ It is expected that additional public funding (for example through pending Congressional legislation) and/or public/private partnerships (for

² See Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, *Order*, PS Docket No. 06-229, 25 FCC Rcd 5145 (rel. May 12, 2010) ("Waiver Order"); *Also See* Public Safety and Homeland Security Bureau Approves Long Term De Facto Transfer Spectrum Lease Agreements filed by Conditional Waiver Recipients to Establish 700 MHz Interoperable Public Safety Wireless Broadband Networks, *Public Notice*, DA 10-1678 (rel. Sept. 2, 2010).

³ SONM was awarded \$38.7 million in BTOP grant funding, with a \$17 million state-funded match, that will pay for completing the digital upgrade of a statewide microwave backbone as well the initial deployment of 700 MHz public safety broadband service in Santa Fe and Albuquerque. The total cash contribution from SONM for the BTOP grant project is \$5.4 million.

example with critical infrastructure users) will help support additional phases of the buildout of the statewide system.

In building out the network, the State will leverage existing assets as much as possible. Currently, the State operates a State-owned microwave tower and fiber optic public safety communications network that serves as a backbone for public safety and government communications. This system, which has been in operation for more than half a century, is undergoing the completion of analog-to-digital upgrade with the assistance of BTOP funding. This network of towers will serve as base station locations and points of access for the 700-MHz broadband deployment. Once the digital upgrade of the microwave backbone is completed, the network will be utilized to backhaul 700 MHz broadband traffic. The initial phase of the 700 MHz LTE system will bring much needed affordable public safety grade broadband services to first responders, emergency care providers and governmental anchor institutions in Albuquerque and Santa Fe. It is anticipated that this same quality of broadband services will later be extended to public safety and governmental users throughout New Mexico.

The New Mexico financial plan for use of the 700 MHz public safety spectrum calls for a wide range of state and local governmental entities operating on the statewide system. If the number of potential users is significantly reduced from existing estimates the economics of operating the system will be negatively impacted and could become difficult, if not impossible, in parts of this rural state.⁴ For that reason, it is important that the Commission confirm that under Section 337 (f) of the Communications Act (47

⁴ Under the Special Award Conditions of its BTOP Grant New Mexico must comply with all FCC rules and requirements established by the Commission regarding the use of the 700 MHz public safety broadband spectrum.

U.S.C. §337(f)) all state and local governmental entities are eligible users able to operate on the New Mexico statewide 700 MHz public safety system for official communications. As shown below, this interpretation is fully consistent with Section 337 of the Act, existing rules and prior rulings by the Commission.

II. Under Existing Law All State And Local Governmental Users Are Eligible To Operate On The 700 MHz Public Safety Broadband Spectrum For Official Communications.

In its *Waiver Order*, the Commission authorized 20 governmental entities across the United States, including the State of New Mexico, to build and operate their respective portions of the 700 MHz public safety broadband network. Consistent with Section 337 (f) of the Communications Act the Commission found all of these cities, states and counties to be “public safety entities” and authorized early deployment on the public safety broadband spectrum.⁵ In relevant part, Section 337(f)(1) of the Communications Act defines “public safety services” as “services” --- “the sole or principal purpose of which is to protect the safety of life, health, or property” by “State or local government entities...that are not made commercially available to the public by the provider.”

Section 90.523 of the Commission’s Rules, 47 CFR § 90.523, implements the definition of public safety services contained in Section 337 (f) and specifically states, “Any territory, possession, state, city, county town or similar State or local governmental entity is eligible to hold authorizations.” The rule section requires no further eligibility

⁵ “By this Order we grant, with conditions, those waiver Petitions listed in Appendix A, filed by public safety entities (‘Petitioners’) seeking early deployment of statewide or local public safety broadband networks in the 700 MHz public safety broadband spectrum (763-768 and 793-798 MHz). *Waiver Order*, at ¶ 1 (emphasis added).

test as to the types of services the governmental entity is providing, but rather makes *all* governmental entities eligible to operate on the public safety spectrum.

In adopting eligibility rules for the 700 MHz public safety spectrum, the FCC stated “we believe that Congress expected the Commission to draw on its extensive, relevant experience in allocating and licensing other Private Land Mobile Radio (PLMR) spectrum designated for public safety-related activities.”⁶ As noted in the Charlotte Petition, Section 90.20 (a) of the rules, which has long guided the Commission’s licensing of public safety entities, provides that “Any territory, possession, state, city, county, town or similar governmental entity is eligible to hold authorizations in the Public Safety Pool to operate radio stations for transmission of *communications essential to official activities of the licensee...*” (47 CFR § 90.20 (a) (1) (emphasis added)).

The Commission’s policies underlying these rule sections show that state and local governmental entities are entitled to a presumption that the sole or principle purpose of their communications service is the safety of life, health and property and that all official communications of the government entity should be authorized. As noted above, the Commission in its *Waiver Order* granted the waivers in this docket based on the status of the applicants as government entities—i.e., states, cities, counties—without requiring recipients to be police or fire agencies or other first responders. The requested declaratory ruling is in line with the Commission’s intent in making the 700 MHz spectrum available to the widest possible numbers of government users consistent with

⁶ The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010; Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96-86, *First Report and Order and Third Notice of Proposed Rulemaking*, 14 FCC Rcd 152, at ¶ 3 (1998).

Section 337. “[W]e conclude that state or local government entities are eligible for licensing in the 700 MHz band *without further showing as to eligibility*. We acknowledge, in this regard, our departure from the Second Notice's tentative conclusion that certain state and local government entities would be ineligible for licensing under the statutory definition of public safety services. We are adopting a more inclusive interpretation today because, as suggested by many commenters, the more inclusive definition better reflects the statutory intent.”⁷

Under the *Waiver Order* the waiver recipients will utilize or oversee the utilization of the authorized spectrum for the principle purpose of providing public safety services. Accordingly, the official communications of all government entities operating under that authorization should be allowed.

⁷ *Id.*, at ¶ 54 (Footnotes omitted, emphasis added).

CONCLUSION

In view of the foregoing, the State of New Mexico requests that the Commission issue a declaratory ruling confirming existing law that all local and state governmental entities are eligible to conduct their official communications operations on the 700 MHz public safety broadband spectrum.

Respectfully Submitted,

STATE OF NEW MEXICO
Department of Information Technology
Cabinet Secretary/CIO

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